

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota by  
Delores Fridge, Commissioner,  
Department of Human Rights,  
Complainant,

v.

The Board of Trustees of the  
Parish of St. Pius X,  
The Board of Trustees of the  
Parish of St. Mary of the Lake and  
Holy Family Middle School,  
Respondents.

**SUPPLEMENTAL ORDER ON  
MOTION FOR COSTS  
AND CIVIL PENALTY**

The above-entitled matter came before the undersigned Administrative Law Judge on Complainant's motion for an order to supplement the ALJ's prior Order of August 7, 1998. Complainant requests that the supplemental order specify the amount of costs and services rendered by the Administrative Law Judge and discuss the factors considered by the ALJ in determining the amount of the civil penalty. Complainant filed its motion on August 24, 1998. Respondents filed a memorandum in opposition to the motion on ?, 1998. The record closed on ?, 1998.

Erica Jacobson, Assistant Attorney General, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130 appeared on behalf of the Complainant. Robert M. Frisbee, Attorney at Law, 4005 West 65<sup>th</sup> Street, Suite 200, Edina, Minnesota 55435, appeared on behalf of Respondents.

Based upon all of the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

**ORDER**

IT IS HEREBY ORDERED:

1. That Complainant's motion for a supplemental order is GRANTED.
2. That Respondents shall reimburse the Department \$ in litigation and hearing costs.
3. That all payments ordered in this matter shall be made within 60 days of the date of this Order.

Dated this \_\_\_\_ day of August 1998.

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STEVE M. MIHALCHICK  
Administrative Law Judge

### **NOTICE**

Pursuant to Minn. Stat. § 363.071, subd. 2 and 3, this Order is the final decision in this case. Under Minn. Stat. § 363.072, the Commissioner of Human Rights or any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.69.

### **MEMORANDUM**

This matter concerns Holy Family Middle School's restriction of its baseball team to boys in violation of Minn. Stat. § 363.03, subd. 5. In April of 1997, the mother of an 8<sup>th</sup> grade girl who was not permitted to play on the school's baseball team filed a charge of discrimination with the Department of Human Rights. The Department conducted an investigation and made a finding of probable cause to believe that Respondents committed an unfair discriminatory practice. After filing a request for hearing with the Office of Administrative Hearings, the Department moved for summary disposition. On August 7, 1998, the Administrative Law Judge granted summary disposition in favor of Complainant. The ALJ ordered Respondents to reimburse the Department of Human Rights for the costs of services rendered by the Administrative Law Judge pursuant to Minn. Stat. § 363.071, subd. 7. In addition, the ALJ ordered Respondents to pay a civil penalty in the amount of \$10,000. The Complainant now moves for a supplemental order specifying the amount of the costs of services rendered by the ALJ and discussing the factors considered by the ALJ in determining the civil penalty amount.

Pursuant to Minn. Stat. § 363.071, subd. 7, the Administrative Law Judge must order a Respondent who is determined to have engaged in an unfair discriminatory practice to reimburse the Department and the Attorney General for all appropriate litigation and hearing costs, unless payment of the costs would impose a financial hardship on the Respondent. Respondents have not established that the costs to be awarded in this proceeding will result in a financial hardship. As of the date of this Order, litigation costs either charged or to be charged to the Department of Human Rights by the Office of Administrative Hearings for this matter amounts to (\$2,253.00 +?) (Exhibit A). Respondents shall pay this amount to the Commissioner of Human Rights as reimbursement for the litigation and hearing costs in this matter.

In addition, Minn. Stat. § 363.071, subd. 2 requires the Administrative Law Judge to order a Respondent found to be in violation of any provision of section 363.03 to pay a civil penalty to the state. The ALJ found Respondents to have violated Minn. Stat. § 363.03, subd. 5 by restricting membership on its baseball team to boys. The ALJ ordered Respondents to pay a civil penalty in the amount of \$10,000. In arriving at this amount, the ALJ took into account the seriousness and extent of the violation, the public harm caused, whether the violation was intentional and the financial resources of the Respondents. The ALJ found Respondents' violation of section 363.03 to be intentional and serious. Respondents did not dispute that they intentionally excluded an 8<sup>th</sup> grade girl from membership on Holy Family Middle School's baseball team because of her gender. Excluding girls from athletic teams because of their gender unfairly denies girls

the opportunity to obtain the many benefits derived from participating in school athletics. In addition, Respondents' policy of restricting its baseball and other teams to boys likely discouraged other girls from attempting to participate on those restricted teams.

Based on the seriousness of the violation and the somewhat limited resources of Respondents<sup>[1]</sup>, the Judge determined that the \$10,000 penalty figure was an appropriate amount. The penalty is large enough to serve as a meaningful deterrent to any further violations of the Human Rights Act, but not so large as to result in a financial hardship for the parish boards that govern the school.

S.M.M.

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<sup>[1]</sup> Two parishes provide the funds for Holy Family Middle School based on the school's annual budget requests. Holy Family Middle School's annual budget for the 1997-1998 school year was approximately \$265,000. (Respondents' Response dated April 16, 1998 to Request for Document No. 5.)